

General Information Letter: Repeal of letter ruling IT 92-0022, dealing with inclusion of "deposit-type funds" in the apportionment factor.

July 31, 1998

Dear:

Please find enclosed a copy of a letter dated December 11, 1991, from Mr. xxxx xxxxxx of your office, requesting a letter ruling, and a copy of our letter dated January 22, 1992 and designated IT 92-0022 in response to the request. Please be advised that the ruling in IT 92-022 is incorrect and that letter ruling is hereby revoked. This letter is a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

The ruling request involved an interpretation of Section 304(b) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.), which provides the formula for apportioning to Illinois the business income of an insurance company engaged in a multistate business. Section 304(b)(1) of the IITA provides:

Except as otherwise provided by paragraph (2), business income of an insurance company for a taxable year shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this State, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. For purposes of this subsection, the term "direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Illinois Director of Insurance in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.

In IT 92-0022, the Department ruled that, for purposes of the this provision, "deposit-type funds" reportable by a life insurance company on line 1A of its Summary of Operations on the Annual Statement form prescribed by the National Association of Insurance Commissioners (the "Annual Statement") are "direct premiums written" and must be included in the apportionment computation.

Upon further review, the Department has determined that the definition of "direct premiums written" in Section 304(b)(1) of the IITA as "premiums written, assessments and annuity considerations" refers only to "Premiums written and annuity considerations" properly reportable on Line 1 of the Summary of Operations of the Annual Statement and to assessments. This definition therefore does not include deposit-type funds reportable on Line 1A of the Annual Statement.

Beginning in 1990, Schedule T of the Annual Statement, entitled "Premiums and Annuity Considerations" was amended by adding a column reporting deposit-type funds collected during the year as well as premiums and annuity considerations collected during the year, without the title of the schedule being changed. However, the fact that deposit-type funds were reported separately from premiums

and annuity considerations everywhere else in the Annual Statement both prior to and subsequent to 1990 indicates that this change in Schedule T was not intended to mean that the term "premiums and annuity considerations" included deposit-type funds.

Accordingly, for purposes of Section 304(b) of the IITA, the term "direct premiums written" does not include deposit-type funds reportable on line 1A of the Summary of Operations of the Annual Statement, and such deposit-type funds are therefore not considered in apportioning the business income of an insurance company.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have a client which is not under audit and which desires to obtain a binding Private Letter Ruling on this subject regarding its factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton  
Associate Chief Counsel -- Income Tax